IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12635 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BRIJESH ALIAS MUNNA TAKLU S/O PRABHUNATH TIWARI
Versus
STATE OF GUJARAT AND OTHERS

==========

Appearance :
MS SUBHADRA G PATEL for Petitioner(s) : 1,
MRS HB PUNANI, ASSISTANT GOVERNMENT PLEADER for the Respondents

==========

CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 02/09/2005

ORAL JUDGMENT

The detenu has challenged the order dated 14th June 2005 passed under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') passed by the detaining authority-respondent No.2, Commissioner of Police, Ahmedabad City on the ground that act alleged against the detenu is not disturbing even tempo of public life, order, peace or general health of the public and, therefore, the order of detention being illegal, arbitrary and violative of constitutional safeguards given to the detenu be quashed and set aside.

As per the order dated 14th June 2005, three crimes came to be registered at Prohibition Station, Eastern Region and Bapunagar Police Station for the offences punishable under Section 66-B, 66-1B and 65E and after arriving at subjective satisfaction, the detaining authority has passed the impugned order. It is stated that

since the petitioner is enlarged on bail, qua three different crime registrations by the authority and is under arrest in view of Section 151 of the Criminal Procedure Code, after perusing the record and the report of the Police Station, Shahibaug, there are all possibilities that in the event of detenu being presented before the competent Court of law was likely to be enlarged on bail and thereafter continue in illegal activities which may be prejudicial to the public order and public health.

The impugned order is mainly challenged on the ground of non-application of mind by the detaining authority to the relevant and germane material while arriving at the subjective satisfaction of the aspect about petitioner moving the bail application and is getting enlarged on such bail application by the Court of law and further any material which may affect the public order and public health due to such anti-social or criminal activities of the petitioner.

It was submitted by the learned counsel for the petitioner that simple registration of different offences under the Bombay Prohibition Act will not ipso-facto result into disturbance of public order, unless specific material exist before the detaining authority to come to the conclusion that in view of statements of some witnesses or in a given case even stray instance of violence resulting into disturbance of peace at the public place and in absence of such instances, on the basis of which it can be concluded that such activities are prejudicial which may disturb even tempo of public life. In the present case, according to learned advocate for the petitioner, no such instances have been either alleged or no other material exist, except bare registration of the crimes and for that purpose, she has relied on the decision in the case of **ASHOK BALABHAI MAKWANA VS. STATE OF GUJARAT** in Letters Patent Appeal No.223 of 2000 dated 22.08.2000, where the Division Bench of this Court, after taking into

consideration various decisions of the Apex Court reported in AIR 1989 SC 491, in the case of **PIYUSH KANTILAL MEHTA VS. COMMISSIONER OF POLICE**, JT 1989 (4) SC 177, in the case of **OM PRAKASH VS. COMMISSIONER OF POLICE AND OTHERS** and distinguishing the judgment reported in 1999 (2) GLH 415 in the case of **KANUJI S.ZALA VS. STATE OF GUJARAT AND OTHERS** held that, simple recital of statutory phrases like disturbance of public order or public health or activities of the detenu being prejudicial to State, public order or public health, in absence of any credible material, no order of detention can be passed. Even in a given case involvement in bootlegging activities, if coupled with violence may not amount to disturbance of public order and public health and it depends of facts and circumstances of each case.

In view of the above settled position of law and the ratio laid down therein, I do not find any circumstance or any credible material arrived

at by the detaining authority for subjective satisfaction which can be said to be disturbing the public order or public health. In the present case, even no witness or any other person has stated about the prejudicial activities of the petitioner and the report of the sponsoring authority simply stated about registration of the offences at particular police station.

In the circumstance, it cannot be said that the order of detention is legal and for the reasons stated hereinabove, it is quashed and set aside. The detenu is set at liberty forthwith, if he is not required in any other offence by any other authority. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(ANANT S.DAVE, J.)

*Shitole